

SENATE BILL 185

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2004 Regular Session
4lr0196
CF 4lr0169

By: **The President (By Request - Administration) and Senators Brinkley, DeGrange, Dyson, Hafer, Harris, Hooper, Jacobs, Kittleman, McFadden, Munson, Pipkin, Schrader, Stoltzfus, and Stone**

Introduced and read first time: January 23, 2004

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes and Criminal Procedure - Victim and Witness Intimidation**

3 FOR the purpose of prohibiting a person from harming another, threatening to harm
4 another, or damaging or destroying property with the intent to induce a victim
5 or witness not to report the existence of facts relating to a crime or delinquent
6 act; prohibiting solicitation of another person to harm another, threaten to harm
7 another, or damage or destroy property with the intent to induce a victim or
8 witness not to report the existence of facts relating to a crime or delinquent act;
9 prohibiting a person from threatening to harm another with the intent of
10 retaliating against a victim or witness for giving testimony in an official
11 proceeding or reporting a crime or delinquent act; prohibiting a person from
12 soliciting another person to harm another, threaten to harm another, or damage
13 or destroy property with the intent of retaliating against a victim or witness for
14 giving testimony in an official proceeding or reporting a crime or delinquent act;
15 prohibiting a person, by threat, force, or corrupt means, from trying to influence,
16 intimidate, or impede an officer of a court of the United States in the
17 performance of the person's official duties; prohibiting a person from soliciting
18 another person to, by threat, force, or corrupt means, try to influence,
19 intimidate, or impede a juror, a witness, or an officer of a court of the State or of
20 the United States in the performance of the person's official duties; increasing
21 certain penalties; providing that if the testimony, subpoena, official proceeding,
22 or report involving a victim or witness relates to a felony, a person who violates
23 certain provisions of this Act is guilty of a felony and on conviction is subject to
24 a certain term of imprisonment; providing that certain sentences imposed under
25 certain provisions of this Act may be separate from and consecutive to or
26 concurrent with a sentence for certain other crimes; providing that certain
27 statements made by certain victims or witnesses are not excluded in a judicial
28 proceeding by the hearsay rule under certain circumstances; and generally
29 relating to crimes against victims and witnesses.

30 BY repealing and reenacting, without amendments,

31 Article - Criminal Law

32 Section 9-301(c) and (d)

1 Annotated Code of Maryland
2 (2002 Volume and 2003 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - Criminal Law
5 Section 9-302, 9-303, and 9-305
6 Annotated Code of Maryland
7 (2002 Volume and 2003 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article - Courts and Judicial Proceedings
10 Section 3-8A-03(d)(4)(xvi) and (xvii)
11 Annotated Code of Maryland
12 (2002 Replacement Volume and 2003 Supplement)

13 BY adding to
14 Article - Courts and Judicial Proceedings
15 Section 3-8A-03(d)(4)(xviii) and 10-901
16 Annotated Code of Maryland
17 (2002 Replacement Volume and 2003 Supplement)

18 BY repealing and reenacting, without amendments,
19 Article - Criminal Procedure
20 Section 4-202(b)
21 Annotated Code of Maryland
22 (2001 Volume and 2003 Supplement)

23 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
24 MARYLAND, That the Laws of Maryland read as follows:

25 **Article - Criminal Law**

26 9-301.

27 (c) "Victim" means a person against whom a crime or delinquent act has been
28 committed or attempted.

29 (d) "Witness" means a person who:

30 (1) has knowledge of the existence of facts relating to a crime or
31 delinquent act;

32 (2) makes a declaration under oath that is received as evidence for any
33 purpose;

1 (3) has reported a crime or delinquent act to a law enforcement officer,
2 prosecutor, intake officer, correctional officer, or judicial officer; or

3 (4) has been served with a subpoena issued under the authority of a
4 court of this State, any other state, or the United States.

5 9-302.

6 (a) A person may not harm another, threaten to harm another, or damage or
7 destroy property with the intent to:

8 (1) influence a victim or witness to testify falsely or withhold testimony;
9 or

10 (2) induce a victim or witness:

11 (i) to avoid the service of a subpoena or summons to testify; [or]

12 (ii) to be absent from an official proceeding to which the victim or
13 witness has been subpoenaed or summoned; OR

14 (III) NOT TO REPORT THE EXISTENCE OF FACTS RELATING TO A
15 CRIME OR DELINQUENT ACT.

16 (B) A PERSON MAY NOT SOLICIT ANOTHER PERSON TO HARM ANOTHER,
17 THREATEN TO HARM ANOTHER, OR DAMAGE OR DESTROY PROPERTY WITH THE
18 INTENT TO:

19 (1) INFLUENCE A VICTIM OR WITNESS TO TESTIFY FALSELY OR
20 WITHHOLD TESTIMONY; OR

21 (2) INDUCE A VICTIM OR WITNESS:

22 (I) TO AVOID THE SERVICE OF A SUBPOENA OR SUMMONS TO
23 TESTIFY;

24 (II) TO BE ABSENT FROM AN OFFICIAL PROCEEDING TO WHICH
25 THE VICTIM OR WITNESS HAS BEEN SUBPOENAED OR SUMMONED; OR

26 (III) NOT TO REPORT THE EXISTENCE OF FACTS RELATING TO A
27 CRIME OR DELINQUENT ACT.

28 [(b)] (C) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
29 SUBSECTION, A person who violates this section is guilty of a misdemeanor and on
30 conviction is subject to imprisonment not exceeding 5 years OR A FINE NOT
31 EXCEEDING \$5,000 OR BOTH.

32 (2) IF THE TESTIMONY, SUBPOENA, OFFICIAL PROCEEDING, OR REPORT
33 INVOLVING THE VICTIM OR WITNESS RELATES TO A FELONY, INCLUDING AN
34 ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT A FELONY, A PERSON WHO

1 VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT
2 TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

3 (D) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM
4 AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED
5 ON THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.

6 9-303.

7 (a) A person may not intentionally harm another, THREATEN TO HARM
8 ANOTHER, or damage or destroy property with the intent of retaliating against a
9 victim or witness for:

10 (1) giving testimony in an official proceeding; or

11 (2) reporting a crime or delinquent act.

12 (B) A PERSON MAY NOT SOLICIT ANOTHER PERSON TO INTENTIONALLY HARM
13 ANOTHER, THREATEN TO HARM ANOTHER, OR DAMAGE OR DESTROY PROPERTY
14 WITH THE INTENT OF RETALIATING AGAINST A VICTIM OR WITNESS FOR:

15 (1) GIVING TESTIMONY IN AN OFFICIAL PROCEEDING; OR

16 (2) REPORTING A CRIME OR DELINQUENT ACT.

17 [(b)] (C) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
18 SUBSECTION, A person who violates this section is guilty of a misdemeanor and on
19 conviction is subject to imprisonment not exceeding 5 years OR A FINE NOT
20 EXCEEDING \$5,000 OR BOTH.

21 (2) IF THE OFFICIAL PROCEEDING OR REPORT DESCRIBED IN
22 SUBSECTION (A) OF THIS SECTION RELATES TO A FELONY OR A DELINQUENT ACT
23 BASED ON A FELONY, INCLUDING AN ATTEMPT, CONSPIRACY, OR SOLICITATION TO
24 COMMIT A FELONY, A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A FELONY
25 AND ON CONVICTION IS SUBJECT TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

26 (D) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM
27 AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED
28 ON THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.

29 9-305.

30 (a) A person may not, by threat, force, or corrupt means, try to influence,
31 intimidate, or impede a juror, a witness, or an officer of a court of the State OR OF THE
32 UNITED STATES in the performance of the person's official duties.

33 (B) A PERSON MAY NOT SOLICIT ANOTHER PERSON TO, BY THREAT, FORCE, OR
34 CORRUPT MEANS, TRY TO INFLUENCE, INTIMIDATE, OR IMPEDE A JUROR, A WITNESS,
35 OR AN OFFICER OF THE COURT OF THE STATE OR OF THE UNITED STATES IN THE
36 PERFORMANCE OF THE PERSON'S OFFICIAL DUTIES.

1 [(b)] (C) (1) [A] EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS
2 SUBSECTION, A person who violates this section is guilty of a misdemeanor and on
3 conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding
4 [\$10,000] \$5,000 or both.

5 (2) IF AN ACT DESCRIBED IN SUBSECTION (A) OF THIS SECTION IS
6 TAKEN IN CONNECTION WITH A PROCEEDING INVOLVING A FELONY, INCLUDING AN
7 ATTEMPT, CONSPIRACY, OR SOLICITATION TO COMMIT A FELONY, A PERSON WHO
8 VIOLATES THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT
9 TO IMPRISONMENT NOT EXCEEDING 20 YEARS.

10 (D) A SENTENCE IMPOSED UNDER THIS SECTION MAY BE SEPARATE FROM
11 AND CONSECUTIVE TO OR CONCURRENT WITH A SENTENCE FOR ANY CRIME BASED
12 ON THE ACT ESTABLISHING THE VIOLATION OF THIS SECTION.

13 **Article - Courts and Judicial Proceedings**

14 3-8A-03.

15 (d) The court does not have jurisdiction over:

16 (4) A child at least 16 years old alleged to have committed any of the
17 following crimes, as well as all other charges against the child arising out of the same
18 incident, unless an order removing the proceeding to the court has been filed under §
19 4-202 of the Criminal Procedure Article:

20 (xvi) Attempted robbery under § 3-403 of the Criminal Law Article;
21 [or]

22 (xvii) A violation of § 4-203, § 4-204, § 4-404, or § 4-405 of the
23 Criminal Law Article; OR

24 (XVIII) A VIOLATION § 9-302, § 9-303, OR § 9-305 OF THE CRIMINAL
25 LAW ARTICLE;

26 10-901.

27 (A) A STATEMENT IS NOT EXCLUDED BY THE HEARSAY RULE IF THE
28 STATEMENT IS OFFERED AGAINST A PARTY THAT HAS ENGAGED OR ACQUIESCED IN
29 WRONGDOING THAT WAS INTENDED TO AND DID PROCURE THE UNAVAILABILITY OF
30 THE WITNESS AS DEFINED IN MARYLAND RULE 5-804 WHO WAS THE DECLARANT OF
31 THE STATEMENT.

32 (B) THE COURT SHALL DETERMINE THE ADMISSIBILITY OF A STATEMENT
33 UNDER THIS SECTION IN THE MANNER PROVIDED IN THE MARYLAND RULES.

1

Article - Criminal Procedure

2 4-202.

3 (b) Except as provided in subsection (c) of this section, a court exercising
4 criminal jurisdiction in a case involving a child may transfer the case to the juvenile
5 court before trial or before a plea is entered under Maryland Rule 4-242 if:

6 (1) the accused child was at least 14 but not 18 years of age when the
7 alleged crime was committed;

8 (2) the alleged crime is excluded from the jurisdiction of the juvenile
9 court under § 3-8A-03(d)(1), (4), or (5) of the Courts Article; and

10 (3) the court determines by a preponderance of the evidence that a
11 transfer of its jurisdiction is in the interest of the child or society.

12 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take
13 effect October 1, 2004.